

MCI

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Donald F. Evans
Vice President
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Ex Parte

CC Docket 94-129

EX PARTE OR LATE FILED

July 31, 1996

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Federal Communications Commission
Office of Secretary

John Muleta, Esq.
Chief, Enforcement Branch
Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Re: "PIC Change Freeze" Solicitations By Carriers

Dear Mr. Muleta:

The purpose of this letter is to seek informal staff guidance as to whether the "PIC change freeze" solicitations increasingly being made by carriers in the marketplace violate the Communications Act of 1934 (the Act).

On July 23, 1996, MCI Telecommunications Corporation (MCI) filed a complaint against Southern New England Telephone Company (SNET) challenging SNET's solicitation of Primary Interexchange Carrier (PIC) "freezes" of its local exchange service customers' "phone lines." Both long distance and local exchange services are affected by the solicitation. (A copy of MCI's complaint, which discloses violations by SNET of Sections 201(b) and 251 of the Communications Act of 1934, is enclosed herewith for consideration with this request.)

To the extent that unauthorized PIC conversions continue to be a problem, MCI has no quarrel with approaches that allow consumers to request that their service not be switched without their prior express consent. This is a logical and effective way to deal with the problem and provides consumers with a means to protect their interests. However, it is quite another matter when carriers undertake to solicit PIC freezes when the solicitations are made primarily to enhance the competitive positions of the carriers in affected markets. In these instances, the PIC freeze programs can be anti-competitive if they undermine existing competition in the interexchange market or thwart competition in local markets before it even begins.

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In view of these concerns, MCI respectfully requests that you consider the following three scenarios in light of the Commission's pro-competitive policies and the requirements of the Act, and advise of their consistency therewith:

Scenario 1: An interexchange carrier mails to its customers an explanation of what a "PIC freeze" is, including the customer's right to request such a freeze for its long distance service and advising on how to go about obtaining such a freeze.

Scenario 2: An interexchange carrier mails to its customer the same information contained in Scenario One, along with a "response form" that the customer is asked to sign and return to the interexchange carrier for delivery to the customer's local exchange carrier in order to achieve the PIC freeze.

Scenario 3: An interexchange carrier mails to its customer the same information contained in Scenario One, along with a "response form" that the customer is asked to sign and return directly to the customer's local exchange carrier in order to achieve the PIC freeze.

The Commission should address these scenarios (and any others it might wish to consider) to establish a boundary between customer communications that are lawful and solicitations that are not.

It is essential that a balance be struck between what may be appropriate to protect legitimate consumer interests, on the one hand, and what is tolerable in light of the pro-competitive policy goals of the Congress and the Commission, on the other hand. Commission guidance should help to set up boundaries for carriers to consider in approaching their customers.

Sincerely,



Donald F. Evans

Enclosure



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Donald J. Elardo
Director
Regulatory Law

July 23, 1996

John Muleta, Esq.
Chief, Enforcement Branch
Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Re: SNET Communications Act Violations

Dear Mr. Muleta:

Informal complaint is hereby made by MCI Telecommunications Corporation (MCI) against Southern New England Telephone Company (SNET) in connection with the latter's recent marketing solicitations, which violate Section 201(b) of the Communications Act of 1934 (the Act) in several material respects. In addition, these solicitations also violate new Section 251 of the Act, which was enacted in order to bring about competition in local monopoly markets. A copy of the offensive solicitations is appended to this complaint.

MCI is a common carrier engaged, among other things, in the provision of interstate and intrastate long distance telecommunications services. SNET is a monopoly telecommunications service provider offering, among other things, local exchange telephone service within the State of Connecticut and, as well, interstate and intrastate long distance services. MCI and SNET thus are competitors in connection with their furnishing of interstate and intrastate long distance services, and they are potential competitors in connection with the furnishing of local exchange service in Connecticut.

As the attachment demonstrates, SNET actively is engaged in soliciting consumers within Connecticut, where it is the near-exclusive provider of local exchange service, to sign up, first, for SNET "local and long distance service within and beyond Connecticut" -- so-called "SNET All Distance" -- and, then, to commit to a new SNET offering called "Carrier Choice Protection." The latter program, which is characterized as "free," purportedly allows SNET to deny other carriers their right to switch consumers away from SNET in the ordinary course of conducting their businesses. Thus, the latter solicitation, when signed by a consumer, "authorize[s] SNET to protect . . . phone line(s) that use SNET long distance service from being switched without [his/her] express written or verbal consent." Although the formalities appear to limit this restriction to "long distance service," the language in the solicitation itself is broader in reach and



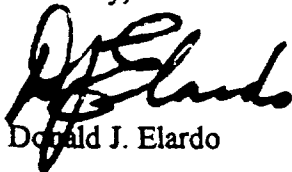
speaks to the **changing** of "local and long distance carriers." Clearly, it is SNET's goal not to allow any switch of Connecticut consumers from their SNET long distance service and, as well, from their SNET local exchange service when local service competition finally emerges in Connecticut.

Section 201(b) of the Act requires all carrier undertakings to be "just and reasonable." SNET's approach here, designed to capture long distance service in combination with the local exchange service that it monopolizes and then insulate itself from long distance competition, as well as potential local exchange service competition, is patently anti-competitive in intent and effect. The approach thus is unlawful because it violates the Congress' and the Commission's pro-competitive policies and goals in all telecommunications markets.. Furthermore, the solicitation involving the "Carrier Choice Protection" program violates Section 201(b) because it is fundamentally deceptive. This is because, although consumers are told that the "freeze" occurs only in connection with long distance service, it is apparent that SNET intends also to freeze any change of local exchange service when competitive alternatives become available to Connecticut consumers. (By freezing "phone lines" as distinct from "long distance service," local service is covered because the same "lines" are used to provide both long distance and local service.) Consumers thus are being materially misled and will be unreasonably deprived of competitive alternatives for local services in the future under this SNET approach. SNET's objective of retaining its monopoly hold over local exchange service in the face of emerging competition, and the means it is taking to achieve that goal, is transparent under the circumstances and simply cannot be tolerated.

Finally, SNET's solicitations, as shown, introduce substantial confusion into the marketplace at a time when significant and complex telecommunications changes are occurring and will continue to occur. With this the case, the public interest requires that all steps be taken by the Commission to eliminate consumer confusion whenever it arises as a result of carrier undertakings designed to fuel such confusion.

In view of the foregoing, the Commission respectfully is requested to find and conclude that these SNET solicitations are unlawful, in plain violation of Sections 201(b) and 251 of the Act, because they are flatly at odds with the proper functioning of competitive markets. Accordingly, the Commission respectfully is requested to direct that SNET immediately cease from engaging in the practices complained of herein.

Sincerely,



Donald J. Elardo

Attachment

Authorization To Change/Confirm My Local/Long Distance Carriers

I want SNET All DistanceSM for my local and long distance service within and beyond Connecticut.*

(please type or print as it appears on your phone bill)

Name _____

Street Address _____

City _____ State CT ZIP _____

Telephone (required) (____) _____

Additional telephone lines for this service:

1. _____

2. _____

3. _____

Signature* (required) _____

Date (required) _____

*With this signature, I authorize the following, as applicable:

- a change in my local carrier from my current carrier to Southern New England Telephone;
- a change in my in-state long distance carrier from my current carrier to Southern New England Telephone;
- a change in my out-of-state long distance carrier from my current carrier to SNET America, Inc.;
- the unblocking of my Carrier Choice Protection to make these switches possible;
- Southern New England Telephone to effect these changes on my behalf;
- Southern New England Telephone and SNET America, Inc. to be the sole providers for my long distance service within and beyond Connecticut (as indicated) for the phone numbers listed.

I understand that I may select per telephone number only one local carrier, only one in-state long distance carrier and only one out-of-state long distance carrier. I also understand that SNET will waive any fee for this change and that a fee may apply for any later change I request.



SC-10A

Get Free Carrier Choice Protection from SNET

And make sure your phone lines can't be switched without your say so!

Did you know that your local and long distance carriers can be changed without your direct request? To protect the SNET long distance service you have, just complete and return this form.

Life holds enough surprises without getting phone bills from companies you've never asked to do business with! With this free service, SNET makes sure you can't be switched unless you know about it and have given your permission first. It's your choice, and you don't want someone else making it for you.

☒ **YES, I Want SNET
Carrier Choice Protection.**

Signature* (required) _____

Name (please print) _____

Street Address _____

City _____ State CT ZIP _____

Date (required) _____

Telephone (required) (____) _____

Additional telephone lines for this service:

1. _____

2. _____

3. _____

*With this signature, I authorize SNET to protect my phone line(s) that use SNET long distance service from being switched without my express written or verbal consent. I understand that this protection is free from SNET.



SC-PHC